

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
NOVEMBER 2, 2021**

**CALL TO ORDER
6:00 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:01 p.m. at the 2nd Floor Conference Room of the Earl Bennett Building, 1035 1st Ave West, Kalispell, Montana. Board members present were Ole Netteberg, Gina Klempel, Cal Dyck and Roger Noble. Toby Liechti had an excused absence. Erik Mack and Joseph Bauer represented the Flathead County Planning & Zoning Office.

There were 25 members of the public in attendance at the meeting and 8 members of public in attendance over Zoom.

**APPROVAL OF
MINUTES
6:01 PM**

Noble motioned, seconded by Klempel, to approve the September 7, 2021 minutes as written.

The motion passed unanimously on a roll call vote.

**PUBLIC COMMENT
*(Public matters that are
within the jurisdiction of the
Board 2-3-103 M.C.A)*
6:01 PM**

None

**VAN BENSCHOTEN &
BING
(FCU-21-12)
6:02 PM**

A request from James & Valerie Van Benschoten and Alden & Valerie Bing, for a conditional use permit for a camp/retreat center on a parcel located within the Blanchard Lake Zoning District. The property is located at 3335 Highway 93 West, near Whitefish, and is zoned AG-40 (Agricultural). The total acreage involved in the request is 20 acres.

**STAFF REPORT
6:02 PM**

Erik Mack reviewed the Staff Report FCU-21-12 for the board.

**BOARD QUESTIONS
6:06 PM**

Klempel said she would have some later.

**APPLICANT
PRESENTATION**
6:06 PM

Alden Bing represented the four applicants first. He discussed their history of family owned and operated business along with the accolades they had received. Their intention was to allow families to engage in the outdoors and maintain the small town legacy.

Jim Van Benschoten discussed growing up on a dairy farm and his history of owning an assisted living facility. He expressed their desire to have a horse, family-friendly style retreat open to anyone.

BOARD QUESTIONS
6:10 PM

None

**AGENCY COMMENTS
COMMENT**
6:11 PM

No public agencies were present to comment. Written comments were reviewed in the staff report.

PUBLIC COMMENT
6:11 PM

Ella Kobelt, 141 Waverly Place, spoke in opposition of the application. She prepared an amended finding of facts for the staff to review and asked that the board consider adopting those. She read the document, see attached.

Jerry Corskey, 184 Livermore, spoke in opposition of the application. He discussed his history of living in Montana. He expressed frustration that they had not received notice because their property would be directly impacted. He was concerned about traffic, ground water, septic systems, and other negative impacts. He felt they should uphold the AG-40 zoning as intended.

Doug Snyder, 120 Livermore, spoke in opposition of the application. He agreed with the voiced concerns spoken before. He was concerned about the seasonal creek on site that drained into the Stillwater River. He was concerned about septic sustainability for a campground and discussed this in great detail. He also discussed that there was a wetland on the property. He discussed an AG easement across the state land and the fact there was not a commercial easement.

Sharon Bell, 120 Livermore, spoke in opposition of the application. She agreed with previously voiced concerns. She was concerned about the nature of the agricultural neighborhood being impacted. She was concerned about the water table being impacted by a campsite. She was also concerned about the negative impact that it might have on the Stillwater River.

Ana Jeremiassen, 1055 Martin Creek, spoke in opposition of the application. She was concerned about the negative traffic impact without mitigation or a traffic light.

Amy Peterson, 180 Livermore, spoke in opposition of the application. She was concerned about the danger the access could bring and the, already present, dangerous traffic in the area. She discussed this at great length. She also pointed out that the easement was designed for agricultural and not commercial.

Craig East, 347 Old Church Rd, spoke in opposition of the application. He spoke on behalf of the Flathead Mountain Bikers who were responsible for the maintenance of the trails. The hills were designed for mountain biking at the Spencer Creek Trailhead, which was noted by the applicant as a place to ride horses.

Rachel Winthrop, 615 Wilson Ave, spoke in opposition of the application. She pointed out the site plan included 4 of the 24 definitions of a retreat center. The 95% was being developed as an RV park without the intention of upholding the definitions of a camp and retreat center.

Brad Thompson, 141 Waverly Place, spoke in opposition of the application. He discussed his concern over the impact on the mountain trails. He was concerned that the DNRC had not weighed in the proposal yet. He was concerned over the potential negative impact the proposal would have on wildlife.

Jeff Gilliam, 245 Twin bridges Rd., spoke in opposition of the application. He was concerned for the small community and said the number of people that would visit would dwarf those living there. He was concerned about the safety issue of crossing state land.

Mike with Luck Flat Ranch, 3350 Hwy 93 spoke in opposition of the application. He reiterated points made by the community, that this was an RV Park. He rebutted several items in the staff report. He discussed the agricultural use in the area and the detrimental impacts it would have if it were approved; including traffic impact, environmental impact, wildlife impact, and a negative impact on the surrounding neighborhood.

Melinda Poeppel, 3350 Hwy 93 W, spoke in opposition of the application. She pointed out that AG-40 had a minimum of 40 acres and this one was made out of 20. She discussed public notification and felt that, in rural areas, people further than 150' of the property line needed to be notified. She felt the county and DNRC needed to take a closer look at the environmental impact. She was concerned about the drainage, storm water, etc. She felt a traffic impact study needed to be taken into consideration to better understand the traffic on Twin Bridges as well as Hwy 93. She wanted to hear from the applicants how horses

and cows were conducive to the camp and retreat center. She discussed the problems with boarding horses. She felt that it was not a retreat by definition and was actually an RV park. She was also concerned about attracting more bears.

Leslie Hunt, 2497 KM Ranch Rd., spoke in opposition of the application. She referenced a letter she had submitted for public comment and encouraged them to deny the proposal based on the concerns already stated at the meeting.

APPLICANT REBUTTAL
6:45 PM

Alden Bing said he sincerely appreciated many of the concerns that were shared. They were from a small tourist town and understood the dynamics that went into growth. He said they had been in touch with MDOT to gain a perspective of the traffic situation. Same as the environmental study and assured them that the septic systems would be reviewed before it was developed. He shared that his father had worked at a state park in Virginia and understood the dynamics that went into ensuring safety.

STAFF REBUTTAL
6:48 PM

Mack noted that this was the first step of the process. If it was approved, they would have to go through subdivision review and then laid out what that would entail. Mack admitted to missing the stream because it was not on the maps and he appreciated that the public had brought that to his attention.

BOARD BREAK
6:49 PM

Board break to review public comments received.

BOARD DISCUSSION
7:00 PM

Noble recognized that the planning staff did a great job in their review. He discussed the requirements for subdivision review process, and did not believe the applicant did a good job addressing impact and stated it does not fit with previously approved camp/retreat centers. He was also concerned with traffic on Hwy 93.

Netteberg complimented the public with how well put together they were. He talked about common sense, noted that he was a horse guy and talked about what it takes to travel with a horse. He was also concerned about the safety and negative impact of the traffic. He believed there were a number of concerns that did not work and was going to have a hard time approving it.

Klempel was ok with the findings, her problem was with the definition of camp/retreat center. She felt spirit and intent did not fit and the infrastructure in this valley was sorely lacking. It was not the fault of the applicant, it was just the nature of the beast. She did not feel it fit the profile.

Dyck greatly appreciated the civility of everyone at the meeting. He was also very concerned over the traffic safety issue and felt it was paramount. He also felt it did not fit the definition of a camp and retreat center and was more of an RV Recreational Concept for the property. He said a conditional use permit was not a right, it was up to the applicant to prove all aspects of it, and felt this application was lacking.

Noble reiterated that they were all on the same page and recognized that it was an RV Park. He addressed the amendments suggested by Kobelt for consideration for the staff report.

**MAIN MOTION TO
ADOPT F.O.F.
(FCU-21-12)
7:12 PM**

Noble made a motion, seconded by Netteberg, to accept Staff Report FCU-21-12 as Findings-of-Fact as amended.

**ROLL CALL TO ADOPT
F.O.F.
(FCU-21-12)
7:13 PM**

Motion passed unanimously on a roll 3-1 call vote. Klempel dissented.

**MOTION TO DENY
(FCU-21-12)
7:14 PM**

Netteberg made a motion, seconded by Noble, to deny FCU-21-12, as amended.

**ROLL CALL TO DENY
(FCU-21-12)
7:14 PM**

Motion passed unanimously on a roll call vote.

**MARINA SEARS
(APPEAL-21-05)
7:18 PM**

An appeal by Marina Sears, with technical assistance from Sands Surveying, Inc., regarding the Zoning Administrator's interpretation for the setback requirements of a guest house from the County right-of-way on Lakeside Boulevard. The property is located at 33 Larchwood/278 Lakeside Blvd., Lakeside, MT within the Lakeside Boulevard North and Scenic Corridor Zoning Districts. The property is zoned R-2 (One-Family Limited Residential) and Scenic Corridor.

**APELLAND
PRESENTATION
7:19 PM**

Marina Sears, 1925 Kelly Rd, Aledo, TX, was the appellant. She was the owner of the subject property and discussed her confusion over the process. She explained what she was proposing was a detached accessory structure and was not trying to build a guest house. She felt Planning and Zoning had implied that she had relied on her realtor and surveyor without consulting with Planning

and Zoning. She felt it was a misconception that she had to contact Planning and Zoning before buying a property. She discussed her family history. When she first looked at the property, there was no realtor involved, and she felt she was wise enough to understand what was needed to figure out what she was buying. She discussed, at great length, the process she had gone through with hiring professionals and pursuing developing her property. She discussed the complications that had arose when planning staff informed her that she could not place the building where she had intended and the back and forth correspondence that was had. She felt that there were no easements or setbacks because there were no documents to support the granting of the easements and setbacks. She discussed her intent to build the structure due to the inconvenience and complications of having to get in a car to use the bathroom [which was on the other side of the road]. She discussed the other 27 structures that were within the setbacks but had been grandfathered in. She believed she should have the same rights to enjoy the property just like her neighbors did. She questioned why the Planning and Zoning Commission was working so hard for her not to have her structure.

STAFF REPORT
7:40 PM

Erik Mack reviewed the Staff Report APPEAL-21-05 for the board.

BOARD QUESTIONS
7:48 PM

Dyck asked about a Through Lot and definition. Mack addressed that the two roads that did not intersect but went through a lot (see Section 8.12.130). There was no definition for a lot that has a lot going through the middle of it and a Through Lot was the closest definition. Dyck asked if a 20' setback would be on both sides of the road if she were to build on the other side of the road. Mack replied yes because it was a thru lot and was more than 200' [wide].

PUBLIC COMMENT
7:50 PM

Mark Johnson, 680 Stonestreet, was the architect on the project. He passed out a narrative which he read from the podium. He did not know what happened as he had been in the business for a long time and had a conversation with Planning and Zoning. There had been a separate interpretation that it didn't qualify as a guest house. He asked what constituted it as a guest house and said he would not have included that if he had known. He also questioned where the boundary line would be.

Darla Harmon, 245 Lakeside Blvd., spoke in support of the appeal. She was a neighbor and relative of the appellant and had knowledge of the area. She said Sears was being targeted and didn't understand why other people in the area where not being addressed. She said that she was trying to put in something for her kids to be able to sleep when down by the lake. It was not meant for VRBO.

Rex Boller, 320 Lakeside Blvd., spoke in opposition of the appeal. He felt the Planning Office did a tremendous job of interpreting the situation and coming up with the right conclusion. He discussed this at length. He said that R-2 was put in for safety, scenic corridors, and this zone change would be doing a great disservice.

Sandy Fox, 43 Larchwood Ln., spoke in support of the appeal. She felt that Sears had stated her case. She felt there were a whole bunch of nasty neighbors who did not want others to have what they had. She said the Planning Office was bullied by them.

Kim Schulke, 14 Bear Dr. in Great Falls., spoke in opposition of the appeal. She said what was being proposed was a guest house; it had a kitchen, bathroom, and living area. She discussed her opinions about Sears not getting the legal advice prior to buying the property and had a misunderstanding of things such as the property line stopping at the high water mark (not the low watermark as stated earlier).

APELLANT REBUTTAL
8:09 PM

Sears asked what Mack meant by it meeting the definition of a thru lot. Sears felt that it felt like they had to find a definition so that they could implement setbacks. She had a survey done. She said that Schulz was wrong. The public owned the water but she owned the dirt. She was concerned that her young granddaughter would cross the road at a time when a car passes. She wants to build a storage building for the boys, have a bathroom, and be able to get food.

BOARD DISCUSSION
8:13 PM

Netteberg reiterated that he was a part of the BOA so that they could use commonsense. He had driven down that road and estimated that 98% of the traffic would be from residents. He saw that the majority of the homes were close to the road. He felt that if everyone else was granted permission to be that close to the road, he didn't see why she couldn't. He wished he could condition it so that they would not be allowed to have people sleep [in the structure].

Klempel said she had looked at the architect design and had never had a cabana come before them but this did not fit what her concept of a cabana was. She wondered who maintained Lakeside Blvd. and discussed the road right-of-way at length.

Noble followed Klempel's rationalization with the road right of way. Mack's research and findings acknowledged that it was a through road. R-2 zoning was

R-2 zoning and he felt the Planning Staff had done a thorough job of trying to investigate and come up with the findings.

Dyck asked Mack if a storage structure (without power and water) would have the same setbacks. Mack replied they would be 20'. Mack reminded them that what was being appealed was if it was a thru lot and if it required a 20' setback. They discussed that, if the board were to deny the appeal, they could come back with a variance to the setback. Dyck reiterated that they had to decide, as a board, whether or not the Planning and Zoning Department made a correct interpretation. It was a black and white issue.

**MOTION TO DENY
(APPEAL-21-05)**

8:23 PM

Noble made a motion, seconded by Klempel, to deny APPEAL-21-05, as amended.

**ROLL CALL TO
APPROVE
(APPEAL-21-05)**

8:23 PM

Motion passed on a roll 3-1 roll call vote. Netteberg dissented.

OLD BUSINESS

8:24 PM

None

NEW BUSINESS

8:24 PM

Netteberg informed the board and staff that, because of family health issues, he was not going to be able to continue to serve after his term was up.

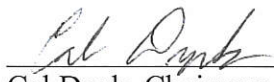
Netteberg also asked about the search for a director. Mack updated them on the interview process and let them know that there may be something in the works.

Dyck said that he appreciate Netteberg's input and passion for the community.

ADJOURNMENT

8:27 PM

The meeting was adjourned at approximately 8:27 pm on a motion by Klempel. The next meeting will be held at 6:00 pm on December 7, 2021.



Cal Dyck, Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 12/7/2021